TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 733.

INTERNATIONAL PAPER COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

FILED OCTOBER 6, 1917.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 8, 1917.

a COMMONWEALTH OF MASSACHUSETTS:

I, Arthur P. Rugg, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, do certify that John F. Cronin, Esquire, whose signature is affixed to the paper hereto annexed, is Clerk of said Court, holden at Boston, in and for the County of Suffolk, in said Commonwealth, and hath the keeping of all the ancient files, records, and proceedings of said Court throughout the Commonwealth, down to the first day of August, A. D. 1797, as well as of the files, records, and proceedings of said Court holden as aforesaid, for said County of Suffolk, subsequent to that time; and is, by law, the proper person to make out and to certify copies of all the records and proceedings of the said Supreme Judicial Court previous to the said first day of August A. D. 1797, as well as of all records and proceedings of the said Court, holden as aforesaid, for the said County of Suffolk, subsequent to that time; and that full faith and credit is and ought to be given to his acts and attestations, done as aforesaid, and that his attestation to the paper hereunto annexed is in due form.

In testimony whereof, I have hereunto set my hand, and caused the seal of said Court to be hereunto affixed, this first day of October in the year one thousand nine hundred and seventeen.

[SEAL.] ARTHUR P. RUGG.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the District Court, Massachusetts.]

The President of the United States to the Honorable the Justices of the Supreme Judicial Court of the Commonwealth of Massachusetts, holden at Boston, within and for the County of Suffolk, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between International Paper Company, Petitioner, and Commonwealth of Massachusetts, Respondent, in a plea of Petition in Equity, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commis-

sion held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said petitioner as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 28th day of September in the year of our Lord one thousand nine hundred and seventeen.

JAMES S. ALLEN,
Clerk of the District Court of the United States, District of Massachusetts.

September 28, 1917.

Allowed by

ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

2 [Endorsed:] 24356. Eq. Internatl. Paper Co. vs. Comlth. of Mass. Writ of Error. Suffolk, ss. Supreme Judicial Court. Filed Sept. 28, 1917. John F. Cronin, Clerk.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

And now, here, the Judges of the Supreme Judicial Court make return of this writ by annexing hereto and sending herewith, under the seal of the said Supreme Judicial Court *Court*, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I John F. Cronin, Clerk of said Supreme Judicial Court have hereto set my hand and the seal of said Court this first day of October, A. D. 1917.

[SEAL.] JOHN F. CRONIN, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To All Persons to Whom These Presents Shall Come, Greeting:

Know Ye, That among our Records of our Supreme Judicial Court, sitting at Boston in said County of Suffolk, for the hearing of cases in Equity from the first day of January in the year of our Lord one thousand nine hundred and fifteen to the first day of October in the year one thousand nine hundred and seventeen, both days inclusive, it is thus contained:—the following being the Petitioner's Bill of Exceptions, Rescript and Final Decree in the case:

4 COMMONWEALTH OF MASSACHUSETTS,
Suffolk County:

Supreme Judicial Court.

In Equity.

INTERNATIONAL PAPER COMPANY

v.

COMMONWEALTH OF MASSACHUSETTS.

Petitioner's Bill of Exceptions.

This case came on for trial on the following agreed facts.

Agreed Statement of Facts.

It is hereby agreed by and between the petitioner and the respondent in the above-entitled cause that, for the purposes of this cause, the following facts shall be taken as true and that the parties shall be entitled at any hearing thereon to refer to any of the statutes of this Commonwealth and any decisions of the Massachusetts or Federal Courts.

The pleadings are not regarded by the parties as material to the determination of the questions presented, but may be referred to, if material.

This cause is a petition in equity brought under section 70 of part III of chapter 490 of the Acts of 1909 and chapter 724 of the Acts of 1914 for the recovery of excise tax paid by the petitioner as foreign corporation alleged to have an usual place of business in this Commonwealth.

The petitioner is a foreign corporation duly admitted to do business in this Commonwealth prior to the passage of the foreign corporation laws of this Commonwealth contained in the Acts of 1903, chapter 437, sections 75 and 56 to 60, and since its admission has lawfully continued to do business within the Commonwealth and

has fully complied with the requirements of the foreign corporation laws of this State.

5 No business of any kind, whether local or interstate, is carried on in Massachusetts by the petitioner except as stated herein.

The petitioner filed its annual certificates of condition under the provisions of section 54 of part III of said chapter 490 at the time when they paid the taxes in question.

This petitioner is a corporation incorporated under the laws of New York, with a total authorized capital stock amounting at par, to $45,000,000.

It is authorized by its charter, among other things, to sell paper manufactured by it, the main purposes for which it is incorporated being set forth in its charter as follows:

"To maintain, conduct and manage in the State of New York and elsewhere the business of manufacturing, producing, selling and dealing in any and all kinds of paper."

The petitioner seeks to recover an excise tax amounting to $5,500 paid by it to the Commonwealth of Massachusetts, under protest, on May 22, 1915, the same having been assessed and levied on it under the requirements of section 56 of part III of chapter 490 of the Acts of 1909 and chapter 724 of the Acts of 1914.

Out of its total authorized capital stock, between $39,000,000 and $40,000,000 is already issued and outstanding, which represents the petitioner's property, assets and business everywhere, both within and without this Commonwealth.

The petitioner maintains and operates some twenty-three paper mills or manufacturing plants used in or in connection with the manufacture of paper and chiefly located in the States of New York, Vermont, New Hampshire and Maine. It owns and operates a paper mill or plant in Massachusetts located in the town of Montague, upon which plant, comprising real estate, water power, machinery and personal property, in and for the year 1915 it was assessed and paid local property taxes to the said town amounting to $8,118 upon an assessed valuation of $472,000.

At this plant is manufactured which is sold by the petitioner throughout the country and also in Massachusetts.

This plant was erected before 1898 by another foreign corporation, from which it was bought by the petitioner about 1898, when the petitioner was organized and duly admitted to this State, such foreign corporation and this petitioner having been duly admitted to do business in this State and to acquire and erect said plant under the foreign corporation laws then in force.

6 Before the passage of the said statute of 1903 this plant had been erected and the petitioner had been duly admitted to do business in this State as a foreign corporation under the foreign corporation laws then in force and upon payment of the fees then required.

Between 1903 and 1907 the petitioner made additions and improvements to said plant at a cost of more than $26,000.

Such additions and improvements consisted mainly of a fire

sprinkler system, a new water wheel for a pulp mill, additional equipment for a new boiler house, a time office and a power and light plant. No part of such additions and improvements could be abandoned, removed or converted to or sold for uses other than those of a paper mill, except at a substantial loss to the petitioner in their present market value for the purposes for which they are now using them.

After such additions and improvements had been completed as aforesaid the Act of 1909 (chapter 490) was passed.

The rate of the franchise tax on domestic corporations for the year 1915, determined as provided in St. 1909, c. 490, part III, §43, was $18.55 per $1,000 of taxable value.

The rate of taxation on property in the town of Montague for the year 1915 was $17.20 on each thousand dollars' worth of assessed property, real or personal.

The petitioner, as a foreign corporation, since the passage of the said Act of 1909 has been required to pay any now pays local property taxes to the town of Montague on the value of its real and personal property located in this State and, in addition, the full amount of the foreign corporation excise, without any deduction for local taxes paid on property, real and personal. Such excise tax or taxes now amount, under the said Act of 1909 and chapter 724 of the Acts of 1914, to $5,500 per annum.

A paper mill requires for its operation a plant, water-power, buildings and special machinery and appliances of special nature and construction. A very important part of the required investment consists of water-power, sluice-ways, machinery and appliances of special construction, (including such additions and improvements as were made between 1903 and 1907, as aforesaid) much of which is of no use in kinds of business other than paper manufacturing.

If the petitioner abandoned its business of manufacturing paper in Massachusetts, its plant would be worth its present fair market value as a paper manufacturing plant if it could be sold in its entirety for paper manufacturing purposes and it could be sold by it for at least the amount of its value to a person, firm or corporation, if
7 any, desiring to use and operate it in the manufacture of paper. If however, it was unable to obtain a purchaser who desired to operate the plant for manufacturing paper, it is probable that the petitioner would be able to sell this plant or the improvements and additions made between 1903 and 1907, as aforesaid, only at a substantial loss from their present fair market value as a paper manufacturing plant, or as parts of such a plant.

The total assets of the petitioner amount, in value, to not less than $39,000,000 to $40,000,000, or the par value of its issued and outstanding stock.

Of its total assets, not more than one and three-fourths per cent. in value, of the same are located or invested in Massachusetts.

Aside from such portions of the petitioner's manufacturing as is done in Massachusetts at its Montague plant, as aforesaid, the only other business or activities conducted by the petitioner in this State are carried on at or in connection with its selling office maintained in

the City of Boston, the operations of which, so far as material, are fully stated herein.

This office has direct supervision, but subject to the approval of the New York office, of sales made in Massachusetts, both interstate and intrastate, and also of interstate commerce transacted in the other New England States.

At this office there are employed two salesmen who negotiate contracts of sale of the company's goods, subject to the approval of the New York office.

At its Boston office is also maintained a book-keeping and clerical force for the purpose of recording and carrying on the business conducted by those two salesmen, as aforesaid.

86% or thereabouts of the sales and contracts of sale negotiated by the petitioner through its Boston office or for execution in Massachusetts require or contemplate the transportation and delivery of the goods sold from a foreign mill located outside of Massachusetts to the purchaser in Massachusetts or from its Massachusetts mill to purchasers residing outside of Massachusetts.

Only 14 per cent or thereabouts of its sales or contracts of sale negotiated in or through its Boston office represent sales of goods to be delivered to a Massachusetts purchaser from its Massachusetts mill.

No stock of goods is kept in Massachusetts from which sales of goods are made deliverable by the sale or contract of sale, the company's contracts being largely long term contracts, by the year or otherwise, with newspapers for their entire required supply.

The company aims at having on hand at its various mills
8 or in transit an ample stock so as to make it certain that it will be able to supply the needs of the newspaper publishers whose supplies of white paper it is responsible for, under its long term contracts to keep them supplied.

The petitioner's main business, financial and executive offices are located in New York. It has no Treasurer's or financial or executive offices in this State.

No meetings of stockholders or directors are held here.

No bank accounts are kept here.

No other activities or business are carried on by the petitioner in Massachusetts, except as above stated.

The petitioner asked the judge to make the following rulings of law:

1. As applied to the petitioner, the foreign corporation excise tax of Massachusetts, assessed and levied on it under section 56 of Part III of c. 490, of the Acts of 1909 and chapter 724 of the Acts of 1914, is unconstitutional and void, because it conflicts with the "commerce" clause contained in Section 8 of Article 1, of the Federal Constitution.

2. As applied to the petitioner, the said excise tax is unconstitutional and void, because it is in contravention of the "due process of law" clause contained in the Fourteenth Amendment to the Federal Constitution.

3. As applied to the petitioner, the said excise tax is unconstitutional and void, because it conflicts with the "equal protection of the laws" clause contained in the Fourteenth Amendment to the Federal Constitution.

4. As applied to the petitioner, the said excise tax is unconstitutional and void under the principles set forth in the Western Union and Pullman decisions (216 U. S. 1, 56), which apply to business corporations engaged in interstate commerce, and are not confined, in their application, to quasi-public corporations.

5. The principles of the Western Union decisions (214 U. S. 1, 56) apply wherever, as here, the same instrumentalities and the same agencies carry on in the same places interstate commerce and domestic business in conjunction with each other.

In an excise, measured, as here and in the Kansas tax, by the entire authorized capital, it is totally unnecessary to show that the domestic business is "inextricably interwoven" with the interstate commerce transmitted by the same instrumentalities, or to prove
9 that the interstate and intrastate business cannot be separated, or that they are carried on in such close connection that the intrastate business cannot be abandoned without serious impairment of the interstate commerce. Such factors did not appear in the Kansas tax.

It suffices to show, as here, that the two classes of business, interstate and domestic, are carried on, in conjunction, by the same agencies and at the same places. If so, a tax of this description necessarily burdens to a substantial degree the interstate business of the company, as was held in the Western Union case.

The Baltic decision (231 U. S. 68) only applies to cases where the local business is carried on wholly apart from the interstate commerce.

6. If the local or domestic business is fairly incident to interstate commerce transacted here, which constitutes the great bulk of the total business, the said tax, imposed for the privilege of carrying on such local business, is unconstitutional under the "commerce" clause.

7. As applied to the petitioner, the amount of said excise is "unduly great," having reference to the real value of the local business and the property used therein, and is so "disproportioned" to the volume and profits of the local business and to the value of the privilege taxed that it should be regarded as a mere "device" to reach or burden the interstate portion of the company's commerce, property, and profits, and, consequently, is unconstitutional.

8. If, as here, the petitioner is engaged in this State in the work of conducting some kind of interstate commerce, as their principal function, and in connection therewith, and by the same instrumentalities, a small percentage of local business, a tax measured by the entire capital, both interstate and domestic, is unconstitutional because its necessary effect is to burden directly and substantially the interstate portion of the company's capital, business, and property, and is, consequently, based on an unlawful measure, as was decided in the case of the Kansas tax in precisely the same terms as the statute of 1909 here involved (216 U. S. 1, 56).

9. As applied to the petitioner, the said tax is unconstitutional, because it conflicts with the "equal protection of the laws" clause of the Fourteenth Amendment, under the principles of Southern Ry. Co. v. Greene (216 U. S. 400).

The said tax is unconstitutional, as applied to a company

like this which acquired a large amount of permanent and valuable property in this State prior to the Act of 1907 (St. 1907 c. 578; now St. 1909 c. 490 Part III Sec. 56) imposing the said tax and doubling the amount of the tax, as existing under preceding legislation (St. 1903, c. 437, sec. 75) under which the company had entered this State and acquired such property, and repealing the right theretofore enjoyed by foreign corporations to deduct from their excises the amounts paid for local property taxes, whereas at the time of imposing the said tax of 1907 no similar changes in taxation were made with reference to domestic corporations of the same kind carrying on a precisely similar business.

10. The said tax, under said Act of 1909, is also unequal and unconstitutional, under the "equal protection of the laws" clause, because it charges, without discrimination, the same rate for the local privilege, without regard to whether the company's local business amounts to 1 per cent *of* 99 per cent of its total sales or commerce here transacted, and because, further, the provision for a maximum of $2,000 unfairly and unequally discriminates against the smaller corporations, the corporation with $10,000,000 capital paying precisely the same as that with $100,000,000 capital, and paying nothing whatever on its capital in excess of $10,000,000.

11. Although a tax otherwise lawful may, in some instances, be measured by capital or gross receipts, the Massachusetts excise uses an unlawful and unconstitutional measure, because, being measured by the entire capital stock, it necessarily affects directly and substantially that part of the capital employed in interstate commerce or outside of this state, as was held, as to the Kansas tax in precisely the same terms as said Act of 1909 (216 U. S. 1, 56).

12. St. 1909, c. 490 Part III, sec. 56, as amended by St. 1914, c. 724, as applied to the petitioner, is unconstitutional under the Massachusetts Constitution, because it exceeds the power of the Legislature to impose and levy "reasonable" duties and excises, as limited by Part 2, c. 1, sec. 1, Art. 4, of the Massachusetts Constitution.

The Massachusetts excise is wholly unreasonable.

13. The petitioner, upon the agreed facts, is entitled to recover the tax paid by it.

11 The Judge refused to make said rulings and ordered the entry of a decree dismissing the bill to which rulings and refusals to rule the petitioner took an exception and prays that petitioner's exceptions may be allowed.

By its solicitors.

CHARLES A. SNOW.
E.
WM. P. EVERTS.

Filed March 15, 1916.

March 15, 1916.
Allowed.
WILLIAM CALEB LORING, *J. S. J. C.*

Copy.
Attest.
—— ——, *Clerk.*

[Endorsed:] No. —. Eq.—. International Paper Co. v. Commonwealth. Petitioner's Bill of Exceptions. Suffolk County.

12 And afterwards, to wit, on the thirteenth day of September A. D. Nineteen hundred and Seventeen it was ordered by our said Supreme Judicial Court for the Commonwealth, as follows, viz:

13 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Sept. 13, 1917.

In the Case of International Paper Company vs. Commonwealth of Massachusetts, pending in the Supreme Judicial Court for the County of Suffolk,

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,

Petition dismissed with costs.

By the Court,

C. H. COOPER, *Clerk.*

September 13, 1917.

[Endorsed:] 24356 Eq. No. 988. Supreme Judicial Court for the Commonwealth. Rescript Suffolk County. International Paper Co. vs. Commonwealth of Mass. Suffolk, ss. Supreme Judicial Court. Filed Sep. 14, 1917. John F. Cronin, Clerk.

14 And said rescript was entered in our said Court accordingly.

Whereupon the parties appeared, and further hearing being had upon the rescript the following Final Decree was entered by our said Court, viz:

15 COMMONWEALTH OF MASSACHUSETTS,
Suffolk County:

Supreme Judicial Court.

In Equity.

No. 24356.

INTERNATIONAL PAPER COMPANY, Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS, Respondent.

Final Decree.

The above cause came on to be further heard at this sitting after rescript from the full Court, and thereupon, upon consideration

thereof, it is ordered, adjudged and decreed that the petition of the above named petitioner be and is hereby dismissed with costs to the respondent taxed in the sum of 41.43 Dollars.

By the Court.

JOHN H. FLYNN,
Asst. Clerk.

Sept. 25, 1917.

[Endorsed:] No. 24356, Equity. International Paper Co. vs. Commonwealth of Massachusetts. Final Decree. (Crosby, J.)

16 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said Court to be hereto affixed.

Witness, Arthur P. Rugg, Esquire, Chief Justice of our said Supreme Judicial Court, at Boston, this first day of October in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] JOHN F. CRONIN, *Clerk.*

17 COMMONWEALTH OF MASSACHUSETTS:

Boston, October 2, 1917.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of International Paper Co. vs. Commonwealth decided on the 13th day of September, 1917.

HENRY WALTON SWIFT,
Reporter of Decisions.

18 RUGG, *C. J.*:

This is a petition by a corporation organized under the laws of the state of New York to recover an excise tax paid by it levied for the privilege of doing business in this Commonwealth, assessed to it under St. 1909, c. 490, Part III, s. 56, and St. 1914, c. 724. The material facts are that the authorized capital stock of the petitioner is $45,000,000, of which between $39,000,000 and $40,000,000 has been issued and is outstanding. Its charter confers authority "to maintain, conduct and manage in the State of New York and elsewhere the business of manufacturing, producing, selling and dealing in all kinds of paper." It maintains and operates twenty-three paper mills or plants connected with the manufacture of paper, chiefly located in New York Vermont, New Hampshire and Maine. At Montague in this Commonwealth it owns and operates a paper mill comprising real estate, water power, machinery and personal property, where is manufactured paper sold in Massachusetts and also in other states of this country. The petitioner maintains a selling office at Boston, with bookkeeping and clerical force, where sales and contracts for sale of paper for delivery both within and without this

state are made by two salesmen subject to approval by employees of the petitioner at its main office in New York. About eighty-six per cent of sales and contracts negotiated and made through its Boston office or for execution in Massachusetts, require or contemplate the transportation and delivery of goods from a mill located outside Massachusetts to purchasers in Massachusetts or from its
19 Massachusetts mill to purchasers outside Massachusetts; and about fourteen per cent of such sales and contracts relate to goods to be delivered to a Massachusetts purchaser from its Massachusetts mill. No stock of goods is kept on hand in Massachusetts from which sales are made deliverable, the contracts being largely on long terms for the entire supply of paper required for newspapers, but the petitioner aims to have on hand at its mills and in transit ample stock to supply the needs of its customers.

Every question presented upon this record would be settled contrary to the contentions of the petitioner by Keystone Watch Case Co. v. Com., 212 Mass. 50, Attorney General v. Electric Storage Battery Co. 188 Mass. 239, Marconi Wireless Telegraph Co. v. Com. 218 Mass. 558, and by Baltic Mining Co. v. Com. 207 Mass. 381, and S. S. White Dental Manufacturing Co. v. Com., 212 Mass. 35, both affirmed in 231 U. S. 68, except for the fact that a part of the excise tax here complained of was assessed under the provisions of St. 1914, c. 724, enacted since those decisions.

The constitutionality of that statute is assailed. Its crucial section is printed in a foot note.*
20 The foreign corporation tax law heretofore considered, St. 1909, c. 490, Part III, s. 56,† has exacted from every foreign corporation doing a domestic business within the Commonwealth an excise tax of one-fiftieth of one per cent on the par value of its authorized capital stock, the maximum amount in no event to exceed $2000 in any year. By the St. of 1914 that maximum is removed and an excise at a lower rate is imposed measured by the excess of authorized capital stock more than $10,000,000.

The question is whether the removal of a maximum limitation of the excise and its measurement in part as to the corporations having an authorized capitalization in excess of $10,000,000 at a rate different from that applied to capitalization up to that sum destroy the validity of the excise.

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*"Section 1. Every foreign corporation subject to the tax imposed by section fifty-six of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine shall in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general for the use of the commonwealth, in addition to the tax imposed by said section fifty-six, an excise tax to be assessed by the tax commissioner of one one hundredth of one per cent of the par value of its authorized capital stock in excess of ten million dollars as stated in its annual certificate of condition."

†"Section 56. Every foreign corporation shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the Commonwealth, an excise tax to be assessed by the tax commissioner of one fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars."

The tax levied by said s. 56 is strictly an excise and not a property tax, and does not violate any provision of the constitution of Massachusetts or of the United States constitution. That was decided by the decisions already cited. It was affirmed by the United States Supreme Court in 231 U. S. 68. Hence the general nature and purpose of our foreign corporation tax law is settled. It is not open to further discussion. That general nature and purpose does not
21 appear to us to be changed by St. 1914, c. 784. The circumstance that by its terms the entire authorized capital is used for a measure of the excise is not fatal. That particular point as a federal question is foreclosed by binding decisions. It was said in Pembina Consolidated Silver Mining & Milling Co. v. Pennsylvania, 125 U. S. 181, at 186, that the state "could make the grant of the privilege [of doing intrastate business by a foreign corporation] conditional upon the payment of the license tax and fix the sum according to the amount of the authorized capital of the corporation." The same point was decided in Horn Silver Mining Co. v. New York, 143 U. S. 305. The statute there attacked as violative of the federal constitution imposed an excise measured by a percentage on its capital stock with modifications dependent upon dividends or want of dividends. It there was said, at page 315, "Having the absolute power of excluding the foreign corporation the State may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital"; and again at page 317, "There seems to be a hardship in estimating the amount of the tax upon the corporation, for doing business within the State, according to the amount of its business or capital without the State. That is a matter, however, resting entirely in the control of the State, and not a matter of Federal law, and with which, of course, this court can in no way interfere. * * * It is said that against nearly all other foreign corporations, except this one, the taxes upon
22 their franchises have been computed upon the basis of the capital employed within the State; but as to that we can only repeat what was said in the Court of Appeals of the State that, if this be true, the defendant may have reason to complain of unjust discrimination and may properly appeal for relief to the legislature of the State, but that it is not within the power of the court to grant any relief however great the hardship upon it. The extent of the tax is a matter purely of state regulation, and any interference with it is beyond the jurisdiction of this court. The objection that it operates as a direct interference with interstate commerce we do not think tenable."

The words quoted from the two decisions of the United States Supreme Court last cited were not chance expressions used in the course of an argument by way of illustration, but were directed to the precise terms of statutes imposing an excise tax exacted as a condition to the doing of domestic business by a foreign corporation. Cohens v. Virginia, 6 Wheat. 264, at 399. These expressions were used with deliberation in pronouncing important judgments, and formed es-

sential links in the chain of reasoning by which conclusions were reached. In Kansas City, Fort Scott & Memphis Railway v. Kansas, 240 U. S. 227, this principle was reaffirmed. It was said at page 232-233, "The authority of the State to tax this privilege, or franchise, has always been recognized, and it is well settled that a tax of this sort is not necessarily rendered invalid because it is measured by capital stock which in part may represent property not subject to the State's taxing power. Thus, in Society for Savings v. Coite, 6 Wall. 594, 606, 607, the power to levy the franchise tax was deemed to be 'wholly unaffected' by the fact that the corporation had in-
23 vested in Federal securities; and in Home Ins. Co. v. New York, 134 U. S. 594, 599, 600, the objection to a tax upon the privilege of being a corporation was not rendered invalid because a portion of its capital (the tax being measured by dividends) was represented by United States' Bonds. These cases were cited with distinct approval, and the rule they applied in distinguishing between the subject and the measure of the tax was recognized as an established one, in Flint v. Stone Tracy Co. 220 U. S. 107, 165. It is also manifest that the State is not debarred from imposing a tax upon the granted privilege of being a corporation, because the corporation is engaged in interstate as well as intrastate commerce. Delaware Railroad Tax, 18 Wall. 206, 231, 232; State Railroad Tax Cases, 92 U. S. 575, 603; Philadelphia & Southern S. S. Co. v. Pennsylvania, supra; Ashley v. Ryan, 153 U. S. 436; Cornell Steamboat Co. v. Sohmer, 235 U. S. 549, 559, 560. And, agreeably to the principle above mentioned, it has never been, and cannot be, maintained that an annual tax upon this privilege is in itself, and in all cases, repugnant to the Federal power merely because it is measured by authorized or paid-up capital stock. The selected measure may appear to be simply a matter of convenience in computation and may furnish no basis whatever for the conclusion that the effort is made to reach subjects withdrawn from the taxing authority. We recently have had occasion (Baltic Mining Co. v. Mass., supra), to emphasize the necessary caution that 'every case involving the validity of a tax must be decided upon its own facts'; and if the tax purports
24 to be laid upon a subject within the taxing power of the State, it is not to be condemned by the application of any artificial rule but only where the conclusion is required that its necessary operation and effect is to make it a prohibited exaction." This principle is reiterated in effect in the latest authoritative decision of which we are aware touching this subject. In Kansas City, Memphis & Birmingham R. R. v. Stiles, 242 U. S. 111 the constitutionality of a statute was challenged, whereby an excise tax was levied on corporations measured by a percentage upon capital stock, property represented by which was situated in different states. It there was said, at pages 118-119, "It is urged that this tax is void because it undertakes to tax property beyond the jurisdiction of the State, and imposes a direct burden upon interstate commerce. Objections of this character were so recently discussed, and the previous cases in this court considered, in Kansas City etc. Railway Co. v. Kansas, 240 U. S. 227, that it would be superfluous to undertake extended discus-

sion of the subject now. In that case, after a full review of the previous decisions in this court, it was held that each case must depend upon its own circumstances, and that while the State could not tax property beyond its borders, it might measure a tax within its authority by capital stock which in part represented property without the taxing power of the State. As to the objection based upon the due process clause of the Constitution, we think that principle controlling here. There is no attempt in this case to levy a property tax; a franchise tax within the authority of the State is in part measured by the capital stock representing property owned in other States."

25 The conclusion from these decisions seems indubitable that the use by a state of a percentage on the authorized capital stock of a foreign corporation as the measure of the excise tax or license fee imposed for permission to such foreign corporation to do an intrastate or local business within its borders is not a decisive element in determining the validity of such tax. There is nothing in Western Union Telegraph Co. v. Kansas, 216 U. S. 1, and the group of cases immediately following it in the same volume, and in Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor, 223 U. S. 280, and Oklahoma v. Wells Fargo & Co., 223 U. S. 298, which requires a different conclusion. These decisions depend upon their facts, as do all other cases upon this branch of the law. They do not govern the case at bar. The words used in Kansas City, Memphis & Birmingham R. R. v. Stiles, 242 U. S. 111, at 119, in distinguishing those cases, are equally applicable to the case at bar, namely, "The tax is not of the character condemned in Western Union Telegraph Co. v. Kansas, 216 U. S. 1, and kindred cases. In the latter case, a tax of large amount was imposed upon a foreign corporation engaged in interstate commerce for the privilege of doing local business within the State. Under the circumstances therein disclosed and the character of the business involved, this court held that the statute was in substance an attempt to tax the right to do interstate business, and to tax property beyond the confines of the State, and was therefore void. * * * So of the objection that the tax imposes a burden upon interstate commerce, the test of validity recognized in previous cases and reiterated

26 in Kansas City etc. Ry. Co. v. Kansas, supra, is the nature and character of the tax imposed. The State may not regulate interstate commerce or impose burdens upon it; but it is authorized to levy a tax within its authority, measured by capital in part used in the conduct of such commerce, where the circumstances are such as to indicate no purpose or necessary effect in the tax imposed to burden commerce of that character."

The tax imposed by St. 1911, c. 724, is strictly an excise and not a property tax for the reasons stated at length in Baker Mining Co. v. Com. 207 Mass. 381, and S. S. White Dental Mfg. Co. v. Com., 212 Mass. 35, which need not now be repeated. They apply with as much force to the instant statute as to the original foreign corporation tax statute there considered. The petitioner in the case at bar is carrying on a local business. Intrinsically that is a large

business in itself. The manufacture of paper at Montague is purely a business within this Commonwealth. That is not commerce, although the goods produced there may become the subject of commerce. The distinction between commerce and manufacture is sharp and well defined. A substantial part of the commerce which follows as a consequence of manufacture conducted at the mill located within the Commonwealth is intrastate, consisting of sales and deliveries of paper to residents of the Commonwealth for use here. The local manufacture of paper is disconnected with the interstate business of the petitioner except as an artificial relation has been established by the petitioner. They have no inherent connection one with the other. U. S. v. E. C. Knight Co. 156 U. S. 1. Kidd v. Pearson, 128 U. S. 1, 20, 21, 22. Cornell v. Coyne, 192 U. S. 418, 428-429. Hopkins v. U. S., 171 U. S. 578, 594. Keystone Watch Case Co. v. Com., 212 Mass. 50. The petitioner has a mill within the state and a sales office within the state where it makes sales of its goods manufactured at its
27 domestic mill to purchasers domiciled within the state, to whom those goods are delivered by intrastate commerce. Here is a complete business cycle from raw material through manufacturing processes and sale to delivery to the customer, entirely conducted within the state. The permission to conduct this business depends wholly upon the consent of this Commonwealth. That permission may be utterly withheld to foreign corporations. It may be granted upon any terms which do not violate the Constitution. This Commonwealth cannot interfere with interstate commerce or deprive the foreign corporation of its property without due process of law. But, as was said in the Baltic Mining Co. case, 231 U. S., at 83, "A resort to the receipts of property or capital employed in part at least in interstate commerce, when such receipts or capital are not taxed as such but are taken as a mere measure of a tax of lawful authority within the state, has been sustained. Maine v. Grand Trunk Ry. Co., 142 U. S. 217; Provident Inst. v. Massachusetts, 6 Wall. 611; Hamilton Co. v. Mass. 6 Wall. 632; Flint v. Stone-Tracy Co., 220 U. S. 107, 162-5; U. S. Express Co. v. Minnesota," 223 U. S. 335, 344. The foreign corporation tax law, having been upheld as constitutional in its application to facts not differing in any material respect from those here presented, it does not seem to us in the light of the decisions of the United States Supreme Court, to which reference has been made, to be transformed by St. 1914, c. 724, into an unconstitutional statute as applied to the facts now presented. It does not constitute an interference with or a burden upon interstate commerce. To the same effect in principle is Crane Co. v. Looney, 218 Fed. 260.

28 The statute does not deny equal protection of the laws to the petitioner. The laws of this Commonwealth have levied an excise tax both upon domestic and foreign corporations. But from the first until now there have been important differences of details. The decisions heretofore cited all were made with reference to those differences and hence that factor alone is not of consequence. See, also, St. Louis Southern Ry. Co. v. Arkansas, 235 U. S. 350.

The petitioner contends that because it acquired its real estate in Massachusetts while the earlier law was in force, it is within the protection of Southern Railway Co. v. Greene, 210 U. S. 400. The point of that case so far as it concerns the present facts is stated in the opinion in the Baltic Mining Co. case, 231 U. S., at 87-8, in these words: "In that case the railway company had gone into the State of Alabama and, under authority of the State, acquired a large amount of railroad property upon which it paid taxes as well as a license tax imposed by the State. After the payment of all such taxes and in this condition of affairs, the State undertook to levy upon the railroad company a privilege tax because it was a foreign corporation, not imposing the same tax upon domestic corporations doing precisely the same business. This court held that the railroad company was a person within the meaning of the Constitution and entitled to the equal protection of the laws, and that by the taxation of its railroad property under such circumstances it was denied the equal protection of the law, no like tax being levied upon domestic corporations. It was said in that case (p. 116): 'We have here a foregin corporation within a State, in compliance with the laws of the State, which has lawfully acquired a large amount of permanent and valuable property therein, and which is taxed by a discrimination method not employed as to domestic corporations of the same kind, carrying on a precisely similar business.' The conditions existing in the Southern Ry. Co. v. Greene Case are not presented here." It seems to us that a like conclusion must follow in the case at bar. It is matter of common knowledge that there are many mills in this Commonwealth for the manufacture of paper. There is nothing to indicate that they are not saleable in the market at fair prices, or that paper mill property differs in regard to availability for sale and valuable use from other kinds of manufacturing property.

Moreover, the contention of the petitioner upon this point, if sound, would prevent this Commonwealth from increasing the burden of the excise upon a foreign corporation once it had established itself here and acquired a permanent place of business. It was pointed out in S. S. White Dental Mfg. Co. v. Com., 212 Mass. 35, 48-50, that formerly the burden of taxation upon domestic was manifestly greater than upon foreign corporations. It is not certain that in general they may not still enjoy certain advantages over domestic corporations doing a like business. In the case at bar, it appears that the petitioner pays a lower rate upon its personal property located at its mill (because as a foreign corporation it is there taxed locally for its personal property) than a domestic corporation would pay on like personal property, so far as it contributes to that corporation's franchise value, because a domestic corporation is not taxable locally for such property, but it is taken into account in ascertaining the value of its franchise upon which it pays an excise tax. This arises from the fact that the local rate of taxation in Montague is less than the excise upon franchise value of domestic corporations. There is nothing upon this record to suggest that the excise tax law in its ap-

plication to domestic and to foreign corporations is discriminatory against the latter. The two have stood side by side for many years in principle the same as now. It cannot be presumed in the absence of a definite showing of infraction of the Constitution that they cannot continue to be enforced. Without repeating what was said in 212 Mass. 46-49, and in the White Company case, 218 Mass. at 579, 580, it is enough to say that for the reasons there stated, in addition to those here appearing, the instant statute does not in its operation deny to the petitioner the equal protection of the laws nor establish any discrimination against it.

If, as the petitioner has argued, the statute discriminates in favor of the large and against the small corporations because of the smaller excise levied on corporations of over $10,000,000 capital, that is a matter which does the petitioner no harm and of which, therefore, it cannot complain. McGlue v. County Commissioners, 225 Mass. 59, and cases there collected. Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 576. Rail & River Coal Co. v. Ohio Industrial Commission, 236 U. S. 338, 349.

It is contended that the excise is unreasonable in amount and is therefore unconstitutional. So far as this is a federal question it is concluded against the petitioner by the determination that it is conducting a purely local business as distinguished from an interstate business, and, that, so far as it conducts both interstate and intrastate commerce, the two are distinct and separable. The petitioner is not a public service corporation directly engaged
31 in interstate commerce for hire or otherwise, and it has the option of giving up the local commerce and business if it does not care to prosecute them under the excise imposed. "The company cannot complain of being taxed for the privilege of doing a local business which it is free to renounce," and this is true even though the receipts from the local business do not equal the expenses chargeable against such receipts. Pullman Co. v. Adams, 189 U. S. 420, 422. Allen v. Pullman Co. 191 U. S. 171, 181-2. Illinois Central R. R. Co. v. Mississippi R. R. Commission, 229 Fed. 248, 255.

It is argued that the excise is "unduly great having reference to the real value" of the property of the petitioner within this Commonwealth, or to the amount of domestic business transacted here, and hence the statute must be unconstitutional under Fargo v. Hart, 193 U. S. 490, and U. S. Express Co. v. Minnesota, 223 U. S. 335, 348. For the reason just stated, it does not seem to us that the point is open. It also appears not to be open because there is nothing to show the amount of the domestic business transacted by the petitioner within the Commonwealth. The amount of its domestic business is stated only in percentages. The record is bare of anything from which can be calculated or inferred the actual amount of domestic business done here. The assessed valuation of its tangible property physically situated in Montague is given. It is required by law that that be assessed at its fair cash value. But neither its real value to the petitioner, its book value, its cost, nor its capitalized value are shown. It is said that not more than one and

three-fourths per cent in value of its total assets are in Massachusetts,
and that its "total assets" "amount in value to not less than
32 $39,000,000 to $40,000,000"; but there is nothing to indicate
how much greater than this figure the value of its assets may be. It seems to be manifest that there are not sufficient facts to determine whether the excise is excessive. But if it be assumed that that question is open to the petitioner and that it must be decided on this record, it cannot be said that the excise is excessive. The amount of the excise tax here in issue was $5,500. In itself that sum does not seem disproportionate. It is less than twice the fee annually charged in some cities in the Commonwealth for certain kinds of liquor licenses, where all the physical property engaged in the business also is subject to a property tax. The petitioner has extraordinarily large financial resources. It cannot be presumed that it may not be worth more to such a large corporation than it would be to a small one to be permitted to go into the local markets and compete for local business as a domestic manufacturer. We know of no principle of law which requires the conclusion that a license fee of that amount is unduly or unreasonably great to a corporation of such large capital as the petitioner, for the privilege of admission to the local markets of this Commonwealth for the transaction of an intrastate business in the manufacture and sale of an undisclosed quantity of paper of undisclosed value and out of which an undisclosed profit is realized.

It does not appear needful to discuss in further detail the contentions *out* forward in behalf of the petitioner. The conclusion seems to us to follow from decisions heretofore made that the petitioner does not show that in any respect have its constitutional rights been infringed.

Petition dismissed with costs.

32½ [Endorsed:] International Paper Co. vs. Commonwealth. Certified copy of the opinion of the Supreme Judicial Court.

33 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

Equity.

No. 24356.

INTERNATIONAL PAPER COMPANY (Original Petitioner), Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS (Original Respondent), Defendant in Error.

Petition for a Writ of Error.

And now comes the International Paper Company, and says that on the 25th day of September, 1917, the Supreme Judicial Court

within and for the County of Suffolk in the Commonwealth of Massachusetts entered final judgment herein in favor of the above named respondent and against the above named petitioner, in which judgment and the proceedings had prior thereto in said cause certain errors were committed, to the prejudice of the above name- petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the undersigned corporation, being the petitioner aforesaid, prays that a writ of error may issue in this behalf out of the Supreme Court of the United States, to the end that the errors so complained of may be corrected and the said judgment reversed and that a transcript of the record, proceedings and papers in this
34 suit, duly authenticated, may be sent to the Supreme Court of the United States.

INTERNATIONAL PAPER COMPANY,
(Original Petitioner), Plaintiff in Error.
By CHARLES A. SNOW,
FRANK T. BENNER,
(Per C. A. S.,)
WILLIAM P. EVERTS,
(Per C. A. S.,)
Its Solicitors and Counsel.

35 Writ of error allowed, upon the execution of a bond by the International Paper Company, plaintiff in error, as principal, and the Fidelity and Deposit Company of Maryland, as surety, in the sum of Two Hundred and Fifty (250) Dollars. September 28, 1917.

ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

[Endorsed:] Suffolk, ss. Sup. Jud. Ct. No. 24356 Equity. International Paper Company (Original Petitioner), Plaintiff in Error, v. Commonwealth of Massachusetts (Original Respondent), Defendant in Error. Petition for Writ of Error. Suffolk, ss. Supreme Judicial Court. Filed Sep. 28, 1917. John F. Cronin, Clerk.

COMMONWEALTH OF MASSACHUSETTS.
Suffolk County:

Supreme Judicial Court.

Equity.

No. 24356.

INTERNATIONAL PAPER COMPANY (Original Petitioner), Plaintiff in Error,

v.

COMMONWEALTH OF MASSACHUSETTS (Original Respondent), Defendant in Error.

Assignment of Errors.

And now comes the International Paper Company, being the petitioner in the above entitled cause and being the plaintiff in error herein, and with its petition for a writ of error makes and files the following assignment of errors, and says that there is manifest error in that the Supreme Judicial Court within and for the County of Suffolk in the Commonwealth of Massachusetts erred in refusing certain requests for rulings of law herein specified, duly made by the said petitioner, the plaintiff in error herein, which refusal the said petitioner duly excepted to, and otherwise erred in the respects herein set forth, namely:

1. In refusing to rule, pursuant to the 1st request, as follows:

"As applied to the petitioner, the foreign corporation excise tax of Massachusetts, assessed and levied on it under section 56 of Part III of c. 490, of the Acts of 1909 and chapter 724 of the Acts of 1911, is unconstitutional and void, because it conflicts with the 'com-
37 merce' clause contained in Section 8 of Article 1, of the Federal Constitution."

2. In refusing to rule, pursuant to the 2nd request, as follows:

"As applied to the petitioner, the said excise tax is unconstitutional and void, because it is in contravention of the 'due process of law' clause contained in the Fourteenth Amendment to the Federal Constitution."

3. In refusing to rule, pursuant to the 3rd request, as follows:

"As applied to the petitioner, the said excise tax is unconstitutional and void, because it conflicts with the 'equal protection of the laws' clause contained in the Fourteenth Amendment to the Federal Constitution."

4. In refusing to rule, pursuant to the 4th request, as follows:

"As applied to the petitioner, the said excise tax is unconstitutional and void under the principles set forth in the Western Union and Pullman decisions (216 U. S. 1, 56), which apply to business corpo-

rations engaged in interstate commerce and are not confined, in their application, to quasi-public corporations."

5. In refusing to rule, pursuant to the 5th request, as follows:

"The principles of the Western Union decisions (216 U. S. 1, 56) apply wherever, as here, the same instrumentalities and the same agencies carry on in the same places interstate commerce and domestic business in conjunction with each other."

38 6. In refusing to rule, pursuant to the 9th request, as follows:

"As applied to the petitioner, the said tax is unconstitutional, because it conflicts with the 'equal protection of the laws' clause of the Fourteenth Amendment, under the principles of Southern Ry. Co. v. Greene (216 U. S. 400).

The said tax is unconstitutional, as applied to a company like this which acquired a large amount of permanent and valuable property in this State prior to the Act of 1907 (St. 1907 c. 578; now St. 1909 c. 490 Part III Sec. 56) imposing the said tax and doubling the amount of the tax, as existing under preceding legislation (St. 1903, c. 437, Sec. 75) under which the company had entered this State and acquired such property, and repealing the right there-fore enjoyed by foreign corporations to deduct from their excises the amounts paid for local property taxes, whereas at the time of imposing the said tax of 1907 no similar changes in taxation were made with reference to domestic corporations of the same kind carrying on a precisely similar business."

7. In refusing to rule, pursuant to the 11th request, as follows:

"Although a tax otherwise lawful may, in some instances, be measured by capital or gross receipts, the Massachusetts excise uses an unlawful and unconstitutional measure, because, being measured by the entire capital stock, it necessarily affects directly and substantially that part of the capital employed in interstate commerce

39 or outside of this state, as was held, as to the Kansas tax in precisely the same terms as said Act of 1909 (216 U. S. 1, 56)."

8. In refusing to rule, pursuant to the 12th request, as follows:

"St. 1909, c. 490 Part III, sec. 56, as amended by St. 1914, c. 724, as applied to the petitioner, is unconstitutional under the Massachusetts Constitution, because it exceeds the power of the Legislature to impose and levy 'reasonable' duties and excises, as limited by Part 2, c. 1, Sec. 1, Art. 4 of the Massachusetts Constitution."

9. In refusing to rule, pursuant to the 13th request, as follows:

"The petitioner, upon the agreed facts, is entitled to recover the tax paid by it."

INTERNATIONAL PAPER COMPANY.
(Original Petitioner), Plaintiff in Error.
By CHARLES A. SNOW,
FRANK T. BENNER,
(Per C. A. S.),
WILLIAM P. EVERTS,
(Per C. A. S.),
Its Solicitors and Counsel.

[Endorsed:] Suffolk, ss: Sup. Jud. Ct. No. 24356. Equity. International Paper Company (Original Petitioner), Plaintiff in Error, v. Commonwealth of Massachusetts (Original Respondent), Defendant in Error. Assignment of Errors. Suffolk, ss: Supreme Judicial Court. Filed Sep. 28, 1917. John F. Cronin, Clerk.

40 *Copy of Bond.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

INTERNATIONAL PAPER COMPANY, Plaintiff in Error (Original Petitioner),

vs.

COMMONWEALTH OF MASSACHUSETTS, Defendant in Error (Original Respondent).

(Bond to Party on Writ of Error.)

Know all men by these presents, That we, International Paper Company, a corporation duly established and existing under the laws of New York, the above named Petitioner and Plaintiff in Error in the above entitled cause, as principal, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the Commonwealth of Massachusetts, the above named respondent and Defendant in Error, in the full and just sum of Two Hundred and Fifty (250) Dollars to be paid to the said Commonwealth of Massachusetts to which payment well and truly to be made we bind ourselves, our Successors and assigns, jointly and severally, by these Presents.

Sealed with our seals, and dated the 28th day of September in the year of our Lord one thousand nine hundred and seventeen.

Whereas lately in the Supreme Judicial Court of the Commonwealth of Massachusetts sitting within and for the County of Suffolk in the above suit depending in said Court between International Paper Company, Petitioner and the Commonwealth of Massachusetts,
Respondent, judgment was rendered against the said petitioner
41 and in favor of the said Commonwealth of Massachusetts,
respondent, and the said petitioner, the Plaintiff in Error herein, having procured a writ of Error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington thirty days after the date of such citation.

Now the condition of the above obligation is such, that if the said plaintiff in error shall prosecute its said writ of error to effect, and

answer all damages and costs, if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

INTERNATIONAL PAPER CO.
CHARLES W. LYMAN, [SEAL.]
Vice-President.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By ARTHUR L. TASH, [SEAL.]
Resident Vice-President.

Attest:
JOHN H. LAUDER,
Resident Assistant Secretary.

Signed, sealed and delivered in presence of
JOHN M. PIRKY.

Approved:
September 28, 1917.
ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Approved:
WM. HAROLD HITCHCOCK,
Asst. Attorney General.

42 Supreme Court of the United States.

Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington in the District of Columbia thirty days after the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Judicial Court of the Commonwealth of Massachusetts within and for the County of Suffolk, wherein International Paper Company is the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arthur P. Rugg, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts this

28th day of September, in the year of our Lord one thousand nine hundred and seventeen.

ARTHUR P. RUGG,
Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts.

September 28, 1917.

Attest:
——— ———, *Clerk.*

43 [Endorsed:] 24356, Eq. Internat'l Paper Co. vs. Com'lth of Mass. Citation. Filed Sept. 28, 1917. Attest: John H. Flynn, Asst. Clerk.

September 28th, 1917.

Service of the within citation is acknowledged for the Commonwealth of Massachusetts, defendant in error.

WM. HAROLD HITCHCOCK,
Assistant Attorney General.

44 SUFFOLK, *ss:*

Supreme Judicial Court.

No. 24356.

INTERNATIONAL PAPER COMPANY

v.

COMMONWEALTH OF MASSACHUSETTS.

Stipulation.

It is agreed in the above entitled case that the whole record shall be transmitted to Washington with the writ of error, with the exception of the pleadings.

CHAS. A. SNOW,
WM. P. EVERTS,
Attorneys for Petitioner.
WM. HAROLD HITCHCOCK,
Attorney for Respondent.

[Endorsed:] No. 24356. International Paper Company, vs. Commonwealth of Massachusetts. Stipulation. Suffolk ss. Supreme Judicial Court. Filed Oct. 1, 1917. John F. Cronin, Clerk.

45 *Certificate of Lodgment.*

Supreme Judicial Court.

I, John F. Cronin, do hereby certify that there was lodged with me as such clerk on September 28, 1917 in the matter of International Paper Company vs. Commonwealth of Massachusetts

1. The original bond of which a copy is herein set forth.
2. Two copies of the Writ of Error as herein set forth one for the said defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this first day of October, 1917.

[SEAL.] JOHN F. CRONIN, *Clerk.*

16 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

I, John F. Cronin, Clerk of the Supreme Judicial Court within and for the County of Suffolk and Commonwealth of Massachusetts, do hereby certify that the papers hereunto annexed are an exemplification of the record in the case of International Paper Company, Petitioner, vs. Commonwealth of Massachusetts, Respondent, in said Supreme Judicial Court determined; and attached thereto, and transmitted with said record, are a copy of the Opinion of the Supreme Judicial Court for the Commonwealth, attested by the Reporter of Decisions; a copy of the Application for Writ of Error, a copy of the Assignment of Errors; and the original Citation with acceptance of service endorsed thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Boston this first day of October in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] JOHN F. CRONIN, *Clerk.*

Endorsed on cover: File No. 26,200. Massachusetts Supreme Judicial Court. Term No. 733. International Paper Company, plaintiff in error, vs. The Commonwealth of Massachusetts. Filed October 6th, 1917. File No. 26,200.